

October 23, 2008

CLERK, U.S. BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

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Attorney for: Secured Creditor,  
 Mortgage Electronic Registration Systems, Inc., as nominee for American Home Mortgage  
 Servicing, Inc., its assignees and/or successors

UNITED STATES BANKRUPTCY COURT  
 EASTERN DISTRICT OF CALIFORNIA  
 SACRAMENTO DIVISION

In re:	) Case No. 08-27361-C-7S
	)
	) DC No.: KAT-1
Johannes George Janse Van Rensburg,	)
Matilda Hendrina Janse Van Rensburg,	) Chapter 7
	)
	) <b>MOTION FOR RELIEF FROM</b>
Debtors.	) <b>AUTOMATIC STAY</b>
	)
Mortgage Electronic Registration	)
Systems, Inc., as nominee for American	)
Home Mortgage Servicing, Inc., its	)
assignees and/or successors in interest,	) Date: 11/18/08
	) Time: 9:30 am
Secured Creditor,	) Ctrm: 35, 6 <sup>th</sup> Floor
v.	) Place: 501 I Street
	) Sacramento, CA
Johannes George Janse Van	)
Rensburg, Matilda Hendrina Janse Van	) Judge: Christopher M. Klein
Rensburg, Debtors; and Hank Spacone,	)
Chapter 7 Trustee,	)
	)
	)
Respondents.	)
	)

1 Mortgage Electronic Registration Systems, Inc., as nominee for American Home  
 2 Mortgage Servicing, Inc., its assignees and/or successors ("Secured Creditor" or "Movant"  
 3 herein), moves this Court for an Order Terminating the Automatic Stay of 11 U.S.C. § 362 as to  
 4 moving party (and the Trustee under the Deed of Trust securing moving party's claim) so that  
 5 moving party and its Trustee may commence and continue all acts necessary to foreclose under  
 6 the Deed of Trust secured by the Debtors property, commonly known as 4435 Bays Water  
 7 Drive, Colorado Springs, CO 80920, ("Property" herein). **See Exhibit "1"**.

8 A copy of Secured Creditor's Relief From Stay Information Sheet is filed concurrently  
 9 herewith as a separate document pursuant to Local Rules of Court.

10 The current value of the Debtors' subject Property is \$253,215.00, based upon the  
 11 Debtors' own value as set forth in Schedule A. **See Exhibit "2"**. Movant requests the court to  
 12 take judicial notice of the Debtors' Schedules.

13 In the present case, the Debtors have no equity in the Property, as evidenced by the  
 14 approximate market value compared to the total liens against the Property, principally that of  
 15 Secured Creditor herein and the other liens as noted in this Motion.

16	Value	\$	253,215.00
17	Total Liens to Secured Creditor	\$	258,542.79
18	Equity	\$	(5,327.79)

19 Further, Debtors intend to Surrender the subject property as set forth in Debtors'  
 20 Statement of Intention. **See Exhibit "3"**.

21 Based on the foregoing, Secured Creditor alleges that there is no equity in the subject  
 22 Property, the subject Property is not necessary for an effective reorganization, and Secured  
 23 Creditor is not adequately protected. Secured Creditor is not receiving regular monthly  
 24 payments, and is unfairly delayed from proceeding with the foreclosure of the subject Property.  
 25 Accordingly, relief from the automatic stay should be granted to Secured Creditor pursuant to  
 26 11 U.S.C. § 362(d)(1) and (2).  
 27  
 28  
 29

1 WHEREFORE, Secured Creditor prays for judgment as follows:

- 2 1. For an Order granting relief from the automatic stay, permitting Secured Creditor to  
3 proceed with the foreclosure under Secured Creditor's Deed of Trust, and to sell the  
4 subject Property at a trustee's sale under the terms of the Deed of Trust to proceed  
5 with any and all post foreclosure sale remedies, including the unlawful detainer  
6 action or any other action necessary to obtain possession of the Property.
- 7 2. For an Order that the ten day stay described in Bankruptcy Rule 4001(a)(3) be  
8 waived.
- 9 3. For an Order modifying the automatic stay to protect Secured Creditor's interest, as  
10 the Court deems proper.
- 11 4. For such other relief as the Court deems proper.

12  
13 Dated: October 23, 2008

McCarthy & Holthus, LLP

14  
15 By: /s/ Kelly Ann Tran  
16 Kelly Ann Tran, Esq.  
17 Attorney for Secured Creditor  
18 Mortgage Electronic Registration Systems,  
19 Inc., as nominee for American Home  
20 Mortgage Servicing, Inc., its assignees and/or  
21 successors  
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